

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FILED

January 2, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180183-U

NOS. 4-18-0183, 4-18-0184, 4-18-0185 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JAY MISLICH,)	Nos. 16DT15
Defendant-Appellant.)	16TR274
)	16TR275
)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Holder White and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not abuse its discretion in sentencing defendant to conditional discharge.

¶ 2 In December 2017, defendant, Jay Mislich, pleaded guilty to two charges of driving under the influence of alcohol (DUI) and single charges of improper lane usage and illegal transportation of alcohol. The trial court sentenced defendant to 24 months of conditional discharge. Defendant filed a motion to reconsider the sentence, which the court denied.

¶ 3 On appeal, defendant argues the trial court abused its discretion in sentencing him to conditional discharge. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2016, defendant received two citations for DUI (No. 16-DT-15) (625 ILCS 5/11-501(a)(1), (a)(2) (West 2016)) and single citations for improper lane usage (No. 16-

TR-274) (625 ILCS 5/11-709 (West 2016)) and illegal transportation of alcohol (No. 16-TR-275) (625 ILCS 5/11-502 (West 2016)). A law enforcement sworn report indicated defendant had an alcohol concentration of 0.211. As a result of the DUI citations, defendant's driving privileges were suspended for 12 months.

¶ 6 In December 2017, defendant entered into an open plea to the four charges. In its factual basis, the State indicated defendant was driving a vehicle on the interstate at approximately 3 a.m. on January 30, 2016, when an Illinois State Police trooper initiated a traffic stop because defendant was "drifting in his lane." After approaching the vehicle, the trooper noticed defendant was "thick-tongued" and had a "slurred speech pattern." The trooper also detected a "strong odor of alcoholic beverage." Defendant denied drinking and failed to cooperate with field sobriety tests. After a search warrant was obtained, a breath test revealed an alcohol concentration of 0.211 and a blood test revealed an alcohol concentration of 0.232. The trial court accepted defendant's guilty plea on the four charges.

¶ 7 At sentencing, the State noted defendant had pleaded guilty to harassment by telephone on January 29, 2016 and was ordered not to drink alcohol during the course of his conditional discharge. The current offenses were committed the following day. Defendant's criminal history also included convictions for battery (2011) and a violation of an order of protection (2012), as well as several traffic offenses.

¶ 8 In mitigation, defendant testified he lived with his mother, who was in her mid-seventies and "not in the best of health." He last worked in May 2016, when he owned his own business that "manufactured roofing products." Prior to committing the offenses in this case, defendant stated he had been in "a divorce that lasted seven years" and proved to be "expensive." In late 2015, defendant was dealing with financial issues pertaining to maintenance and child

support. Defendant pleaded guilty to an offense that provided he not use alcohol, and he was arrested the next day because he “wasn’t thinking” and “made a mistake.” The DUI has changed his outlook and way of thinking, as he no longer drinks. In the 22-month time period since the offenses, defendant has not committed any other offenses. He also successfully completed the suspension of his driving privileges. Defendant stated he had been recommended for alcohol treatment and he “already [had] the dates for that.”

¶ 9 The trial court entered convictions plus costs on the traffic offenses. In regard to the DUI, the court noted the existence of “pretty strong aggravating factors,” including (1) defendant was ordered not to drink and then “went out and drank very excessively and drove,” (2) the need to deter others, and (3) defendant’s conduct caused or threatened serious harm. In mitigation, the court believed defendant would likely comply with a period of probation or conditional discharge “given the changes that he’s made.” After noting the “main issue” to be whether defendant should receive court supervision, the court found the aggravating factors “clearly” outweighed the mitigating factors. Further, “given the high blow and the nature and circumstances of this offense, that being on the highway,” court supervision was inappropriate. The court (1) placed defendant on conditional discharge for 24 months; (2) ordered him to perform 100 hours of community service and comply with treatment recommendations; (3) imposed a sentence of 180 days in jail, with 150 days stayed and credit for 1 day served; and (4) ordered him to pay various fines, costs, and assessments.

¶ 10 In January 2018, defendant filed a motion to reconsider the sentence, arguing the sentence of conditional discharge was excessive. Specifically, defendant argued the trial court should reconsider its sentence and award court supervision because (1) his conduct did not cause serious physical harm to anyone, (2) his conduct was the result of extremely stressful

circumstances, (3) his character and attitude indicate he is unlikely to commit another crime, (4) he was likely to comply with the terms of court supervision, (5) he had no prior DUI offenses, and (6) the loss of his driver's license would entail excessive hardship in his attempts to obtain employment and help his mother.

¶ 11 At the February 2018 hearing on the motion, the trial court noted the loss of a driver's license "makes it more difficult to seek employment." However, the court found "the aggravating factors outweighed the mitigating factors." The court found particularly concerning the fact that defendant committed the DUI offense after having been sentenced to probation the day before with the requirement he not drink alcohol. The court denied the motion to reconsider. Defendant appealed, and this court consolidated the three cases.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues the issues "revolve around the trial court's sentence of Defendant to a conviction and 24 months of Conditional Discharge for Driving Under the Influence of Alcohol and straight convictions for the charges of Improper Lane Usage and Illegal Transportation of Alcohol." Defendant contends the convictions on all three charges and the sentence of conditional discharge for the DUI offense constitute an abuse of discretion.

¶ 14 Initially, we find it unclear what defendant is arguing in reference to the convictions on the traffic offenses. However, defendant did not raise the issue of his traffic offenses in his motion to reconsider his sentence. Thus, he has forfeited review of the issue on appeal. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005) (a defendant must object at trial and raise the issue in a posttrial motion to preserve the issue for review). Moreover, other than citing a case on the standard of review, defendant has not cited any case law in support of his DUI claim. "A point raised on appeal that is not supported by

citation to relevant authority is waived under Supreme Court Rule 341(h)(7).” *People v. Stewart*, 406 Ill. App. 3d 518, 528, 940 N.E.2d 273, 281 (2010). Forfeiture aside, we find no abuse of discretion.

¶ 15 The Illinois Constitution mandates “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. “ ‘In determining an appropriate sentence, a defendant’s history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.’ ” *Hestand*, 362 Ill. App. 3d at 281, 838 N.E.2d at 326 (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)). However, “the seriousness of an offense is considered the most important factor in determining a sentence.” *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 53, 23 N.E.3d 430.

¶ 16 With excessive-sentence claims, this court has explained appellate review of a defendant’s sentence as follows:

“A trial court’s sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant’s credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case. [Citation.] Thus, the trial court is the proper forum for the determination of a defendant’s sentence, and the trial court’s

decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review.” (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341 (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234-35, 819 N.E.2d 1274, 1284 (2004), quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)).

¶ 17 When a sentence falls within the statutory range of sentences possible for a particular offense, it is presumed not to be arbitrary. *People v. Moore*, 41 Ill. App. 3d 3, 4, 353 N.E.2d 191, 192 (1976). An abuse of discretion will not be found unless the court’s sentencing decision is “arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.” *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 26, 82 N.E.3d 693. Also, an abuse of discretion will be found “where the sentence is ‘greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.’ ” *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)).

¶ 18 In the case *sub judice*, defendant pleaded guilty to the offense of DUI, a Class A misdemeanor. 625 ILCS 5/11-501(c)(1) (West 2016). A person convicted of a Class A misdemeanor is subject to a sentence not to exceed 364 days of incarceration and shall be committed to the custody of the sheriff. 730 ILCS 5/5-4.5-55(a), 5-8-6(b) (West 2016). Section 5-6-1(a) of the Unified Code of Corrections (730 ILCS 5/5-6-1(a) (West 2016)) states a court shall impose a sentence of probation or conditional discharge unless the court is of the opinion

that (1) imprisonment is necessary for the protection of the public and (2) probation or conditional discharge would deprecate the seriousness of the offender's conduct and be inconsistent with the ends of justice. A period of probation or conditional discharge for a Class A misdemeanor shall not exceed two years. 730 ILCS 5/5-4.5-55(d) (West 2016). As the trial court's sentence of 24 months' conditional discharge was within the relevant sentencing structure for a Class A misdemeanor, we will not disturb the sentence absent an abuse of discretion.

¶ 19 Defendant argues the trial court failed to consider several statutory mitigating factors, including (1) the fact he will compensate the victim, *i.e.*, society, by being a productive member of the community if given court supervision; (2) his character and attitude indicate he is unlikely to commit another crime; and (3) he is particularly likely to comply with the terms of a period of probation. 730 ILCS 5/5-5-3.1(a)(6), (a)(9), (a)(10) (West 2016). As to the first argued factor, defendant offers no case law to support his theory that compensation to society as a victim should lead to a sentence of court supervision. In regard to the second and third factors, the court noted defendant had "made some changes to his lifestyle" and was likely to comply with a period of probation or conditional discharge.

¶ 20 However, while the trial court considered factors in mitigation, it found they were "clearly" outweighed by the "pretty strong aggravating factors" present in this case. The court found it "very concerning" that defendant drove while intoxicated the day after being ordered not to drink. Also, the court noted the need to deter others and the serious harm threatened by defendant's conduct. While the court considered court supervision, it ultimately determined such a sentence would be inappropriate "given the high blow and the nature and circumstances of this offense, that being on the highway."

¶ 21 Given defendant’s conduct during his previous stint on conditional discharge and the serious nature of driving while heavily intoxicated, we find the sentence of 24 months’ conditional discharge was not “ ‘greatly at variance with the spirit and purpose of the law’ ” nor was it “ ‘manifestly disproportionate to the nature of the offense.’ ” *Alexander*, 239 Ill. 2d at 215, 940 N.E.2d at 1067 (quoting *Stacey*, 193 Ill. 2d at 210, 737 N.E.2d at 629). Defendant’s actions show a need for a sentence beyond mere court supervision, and the trial court’s decision to impose a sentence of conditional discharge was not an abuse of discretion. In fact, the court actually went backwards in sentencing by imposing a sentence of conditional discharge, essentially unsupervised probation when defendant had already been sentenced to probation previously. The court would have been fully justified in imposing a more severe form of DUI-specific probation. However, the court took into condition the relevant factors in mitigation. Defendant has expended valuable resources processing an appeal that, if anything, looks the proverbial gift horse in the mouth.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the trial court’s judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 24 Affirmed.